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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,829	03/10/2004	Donald Ullman	03152/0200953-US0	5044
7278	7590	04/17/2007		
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/17/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/798,829	Applicant(s) ULLMAN ET AL.	
	Examiner Steven L. Weinstein	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) <input type="checkbox"/> Notice of Informal Patent Application
6) <input type="checkbox"/> Other: _____ |
|--|--|

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15,17,18,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Renna (WO 00/76327) in view of Hoeting (5,993,870), further in view of Coleman et al (2003/0152672), Jolly (2,980,039) Paulin (5,085,330), Killips (2004/0253351), Hamlin (5,312,014), Bacanskas (2003/0012854), further in view of Coleman et al (2003/0206999), Chan (6,730,339), Hart et al (2003/0118700), and Cecere (6,565,899).

These references are applied for the reasons given in the last Office action along with the reasons given below which are responsive to the amendment. In regard to claim 1, claim 1 now recites that the ring is an integral, unitary member that includes the upstanding member and a base section and wherein the two container bodies are releasably, slidably coupled to the gum holding ring which limits vertical movement of the container bodies. The entire figure 4 of Renna (except for element D) is being construed as the ring capable of holding gum. Although element T and element 2 are not "integral" with the rest of A and B (if one construes integral to mean one piece), Renna discloses that element T is associated with the rest of the structure by a "snug engagement". There is nothing magic about two elements being integral. Whether the elements are attached to each other as a snug fit or are integral is seen to have been an obvious result effective variable. Note that as a unit, the structure shown in fig. 4 of

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Renna, allows frictional coupling to both the lower structure 19 and the upper structure D, wherein the coupling occurs at the lower surface of the assembly and the upper surface of the assembly, respectively. Note, too, that the upper structure D connects by sliding and even the lower structure 19 connects by some degree of sliding (threads or bayonet) and both structures only can move vertically to some limited degree. Note, too, that the recited sliding coupling between elements, with limited vertical movement is, of course, conventional in the art as further evidenced, for example, by Coleman et al (2003/0152672) and Jolly. To modify Renna, if necessary, and substitute one conventional coupling means for another conventional coupling means for its art recognized and applicants intended function would therefore have been obvious. In this rejection, Hoeting et al is further evidence that the structure of Renna would have been capable of being used to hold gum and store candy. Paulin, Killips, Hamlin, and Bacanskas are relied on as in the last Office action as further evidence of the conventionality of providing two foods in two separate compartments with a flowable food in the lower compartment that flows through an intermediate positioned passageway to allow the flowable food to contact the other food, when the structure is tilted. Coleman et al ('999), Chan, Hart et al, and Cecere are relied on as further evidence of the conventionality of structures which allow the contact of two edibles and for the reasons given in the last Office action. In regard to claim 21, which now positively recites gum and candy pieces, since the art taken as a whole, including Renna and Hoeting and Coleman et al, disclose associating one edible with another, including solid flowable edibles with a solid edible, by providing a partition with

passageways therethrough, to modify Renna and substitute any flowable material such as flowable candy pieces and any solid material such as gum for the two components of Renna would have been an obvious matter of choice.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 plus immediately above, and further in view of Boettger ('351), Owen ('385), Swain ('976) and Towns ('279) who are applied for the reasons given in the last Office action mailed 11/1/06.

Claims 1-15, 17, 18, 20 and 21 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Hoeting (5,993,870), in view of Renna (WO 00/76327), further in view of the same group of references, i.e., Coleman et al (2003/0152672), Jolly (2,980,039) Paulin (5,085,330), Killips (2004/0253351), Hamlin (5,312,014), Bacanskas (2003/0012854), further in view of Coleman et al (2003/0206999), Chan (6,730,339), Hart et al (2003/0118700), and Cecere (6,565,899), for the reasons given in the last Office action and above.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 plus immediately above, and further in view of Boettger ('351), Owen ('385), Swain ('976) and Towns ('279) who are applied for the reasons given in the last Office action mailed 11/1/06.

As noted previously, since Hoeting, like Renna, is directed to the problem of allowing one flowable edible to contact a second edible, wherein the second edible is supported above the first flowable edible, and the containers are tilted to cause the flow of the flowable edible, to modify Hoeting and substitute one conventional support

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structure for another conventional support structure, which has passageways therethrough, would have been obvious in view of the art taken as a whole. The issue of the integral structure and the nature of the coupling arrangement between the elements of the apparatus are discussed above in the first rejection. In regard to claim 21, as noted above, to substitute conventional edibles for other conventional edibles, i.e., gum for candy, would have been an obvious matter of choice.

Claims 1-15,17,18,20 and 21 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al (2003/0152672), in view of Hoeting (5,993,870), and Renna (WO 00/76327), further in view of the same group of references, i.e., Jolly (2,980,039) Paulin (5,085,330), Killips (2004/0253351), Hamlin (5,312,014), Bacanskas (2003/0012854), further in view of Coleman et al (2003/0206999), Chan (6,730,339), Hart et al (2003/0118700), and Cecere (6,565,899).

Employing Coleman et al ('672) as the primary reference, Coleman et al ('672) discloses an integral, edible support unit 14, which couples to a lower element 12 and an upper element 16 on the respective lower and upper surfaces of the unit 14 with the unit capable of holding gum and the lower element capable of holding flowable candy. Claim 1 differs from Coleman et al ('672) in the recitation that the unit has openings such that flowable candy from the lower element can contact the other product. It is noted that Coleman et al ('672) intends to allow the flowable candy to contact the other product as well. As evidenced by Renna and the art taken as a whole, since it was well established to provide an element that couples with a container and upper cover with passageways, so that a flowable edible in the lower container can contact the other

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edible when the container is tilted, to modify Coleman et al and provide passageways in the nature of holes or spacing between spokes, would have been obvious in view of the art taken as a whole. The remainder of the claims would have been obvious in view of the art taken as a whole for the reasons given previously or above. That is, the teachings of the art taken as a whole are still pertinent to this rejection.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 plus immediately above, and further in view of Boettger ('351), Owen ('385), Swain ('976) and Towns ('279) who are applied for the reasons given in the last Office action mailed 11/1/06.

All of applicants remarks filed 1/31/07 have been fully and carefully considered but are either considered to be addressed above in the body of the rejection or are seen to be moot in view of the new grounds of rejection. In regard to claims 1-20, it is noted that these claims still do not positively recite the gum or the candy. The apparatus just has the capability of holding gum and storing candy.

In summary, applicants have combined a number of well known structural expedients in the art, employed them for their well known and intended function and achieved no new or unexpected result therefrom.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
4/13/07